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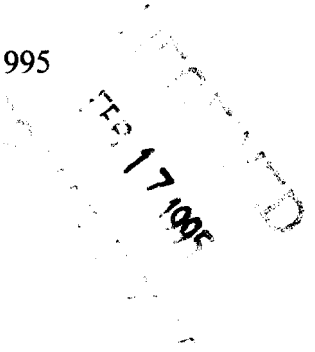
Office of The Attorney General
State of Connecticut

February 16, 1995



Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: In Matter of Amendment to the Commission's Rules
to Preempt State and Local Regulation of Tower Siting
for Commercial Mobile Radio Services Providers
RM-8577

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Please find enclosed an original and four copies of the Comments of Richard Blumenthal, Attorney General of the State of Connecticut, and the Connecticut Siting Council to the Cellular Telecommunications Industry Association's Petition for Rulemaking.

Kindly contact the undersigned if you have any questions regarding this matter.

Sincerely yours,

Mark F. Kohler
Assistant Attorney General

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	:	
	:	
Amendment of the Commission's	:	RM-8577
Rules to Preempt State and Local	:	
Regulation of Tower Siting for	:	
Commercial Mobile Radio Services	:	DOCKET FILE COPY ORIGINAL
Providers	:	February 16, 1995

COMMENTS OF RICHARD BLUMENTHAL, ATTORNEY GENERAL OF THE STATE OF CONNECTICUT, AND THE CONNECTICUT SITING COUNCIL ON THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION'S PETITION FOR RULEMAKING

Pursuant to § 1.405 of the Commission's Rules, Richard Blumenthal, the Attorney General of the State of Connecticut (the "Attorney General"), and the Connecticut Siting Council (the "Council") respectfully submit these comments on the Cellular Telecommunications Industry Association's ("CTIA") petition for rulemaking dated December 22, 1994. CTIA's petition proposes to dramatically alter the regulatory framework for the siting of commercial mobil radio service ("CMRS") towers by preempting state or local authority over such siting. This extraordinary proposal has no legal justification and would be contrary to the public interest. The Attorney General and the Council accordingly request that the Commission deny CTIA's petition.

I. INTRODUCTION

The Attorney General is the constitutional officer empowered by Connecticut statutory and common law to represent the interests of the State of Connecticut and its residents. Commission on Special Revenue v. Freedom of Information Comm'n, 174 Conn. 308, 318-19, 387 A.2d 542 (1978). The Council is an agency of the State of Connecticut having exclusive jurisdiction in Connecticut over the siting of public utility and other facilities, including telecommunication towers "used in a cellular system, as defined in the Code of Federal Regulations Title 47, Part 22, as amended, which may have a substantial adverse environmental effect. . . ." Conn. Gen. Stat. § 16-50i(a)(6); see id. § 16-50x.

Although Connecticut's small size of approximately 5,000 square miles, and population of approximately 3.3 million people make for a relatively high population density that might be considered difficult for telecommunications tower siting, Connecticut has been effective and progressive in siting necessary telecommunications tower facilities. Since having been given, with the support of the cellular industry, jurisdiction over telecommunications towers used in a cellular system, the Council has issued Certificates of Environmental Compatibility and Public Need approving the siting of 122 new telecommunications towers. In addition, the Council has minimized the costly construction of new towers with placement of antennas on rooftops and on existing towers at over 100 sites. Of these facilities, approximately one half are shared with other entities, thus reducing cost and increasing the efficiency and effectiveness of the telecommunications network in the State.

II. FEDERAL PREEMPTION OF STATE AUTHORITY TO SITE TOWERS IS NOT SUPPORTED BY EXISTING LAW.

Federal law does not mandate or justify the Commission taking action to preempt state jurisdiction over the siting of telecommunication towers. State authority does not conflict with or pose an obstacle to the goals of the Omnibus Budget Reconciliation Act of 1993 or other federal law. Instead, state siting authority is an appropriate and useful adjunct to federal efforts to develop a competitive field in wireless communication services.

Federal law may preempt state law in several ways. First, congressional intent to preempt may be stated expressly in statutory language or implicitly contained in the purpose or structure of a federal statute. Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). Second, in the absence of explicit statutory language, Congress may have preempted the field of regulation by enacting a scheme that is so complete and comprehensive as to demonstrate that Congress intended that no room be left for state regulation. Fidelity Federal Savings & Loan Ass'n v. De la Cuesta, 458 U.S. 141, 153 (1982). Third, state law is preempted if it poses an actual conflict with federal law or an obstacle to the achievement of the object of the federal legislation. Pacific Resources Conservation & Development Comm'n, 461 U.S. 190, 204 (1983). None of these grounds for preemption is present here.

Preemption is, after all, a question of congressional intent, California Fed. Savings & Loan Ass'n v. Guerra, 479 U.S. 272, 280 (1987), and the analysis of the question "starts with the basic assumption that Congress did not intend to displace state law." Maryland v. Louisiana, 451 U.S. 725, 746 (1981). While an administrative agency acting within the scope of its congressionally delegated authority preempt state regulation, it has no independent

authority to preempt. Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 374 (1986). Therefore, whether the Commission would have the power to preempt state siting jurisdiction still depends on the language and intent of governing federal law. A review of the relevant federal law reflects a distinct absence of congressional intent to preempt state jurisdiction over tower siting.

CTIA cites § 332 of the Communications Act as reflecting congressional intent to permit the Commission to preempt state authority. A careful review of the provision reveals that the claim is meritless. Section 332 provides in relevant part:

> [N]o State or local government shall have authority to regulate the entry of or the rates charges by any commercial mobil service or any private mobile service, **except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobil services.**

47 U.S.C. § 332(c)(3)(A) (emphasis added). Thus, § 332 only explicitly preempts state regulation of entry and rates. It also explicitly permits states to retain jurisdiction over "other terms and conditions."

CTIA attempts to deflect the import of the plain language of the statute by asserting that the exercise of siting authority by state or local government would necessarily create an obstacle to the congressional goal of creating a competitive market for CMRS. First, as discussed in detail below, state regulation of siting does not conflict or impede the development of the telecommunication infrastructure; rather, state siting regulation serves the important purpose of ensuring that such development is consistent with other public interests of protecting the environment and residents. These important policy goals should not be lightly tossed aside in a rush to build the information superhighway.

Second, the language of the statute is clear. States and local authorities expressly retain regulatory authority over "other terms and conditions." Despite the CTIA's protestations that this is but a narrow reservation of state and local jurisdiction, the language does not indicate congressional intent to disturb existing state authority to regulate tower siting. Therefore, § 332 does not provide a basis for the Commission preempting state authority.

The CTIA also relies on § 2(b) of the Communications Act of 1934 as providing the Commission with authority to preempt state and local siting authority. Section 2(b) certainly provides the Commission with no greater authority than § 332 might provide. It states:

> [N]othing in this chapter shall be construed to apply or to give to the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier. . . .

47 U.S.C. § 152(b). As the CTIA acknowledges, the Supreme Court interpreted §2(b) as a "substantive jurisdictional limitation on the FCC's power," which "fences off from FCC reach or regulation intrastate matters -- indeed, including matters 'in connection with' intrastate service." Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 370, 373 (1986). From this, the CTIA suggests that the Commission would have the power to preempt state authority over tower siting on the vague accusation that state regulation of siting could pose an obstacle to the Commission's jurisdiction over interstate service. This interpretation of §2(b) would create precisely the sort of conflict with § 332 that was rejected by the Supreme Court. Id. at 370-71.

The CTIA has failed to demonstrate that there is a legal basis for the Commission preempting state jurisdiction over tower siting. In enacting § 332, Congress did not intend to give the Commission authority to preempt state or local authorities on the question of tower siting. The CTIA's attempt to manufacture such congressional intent should be rejected.

III. FEDERAL PREEMPTION OF STATE AUTHORITY TO SITE TOWERS IS NOT CONSISTENT WITH THE PUBLIC INTEREST.

Connecticut has erected a careful and effective framework for regulating the siting of telecommunication towers. This regulatory framework strikes an appropriate and workable balance between the need to promote the development of a telecommunications infrastructure in Connecticut with the countervailing public interest in minimizing the potential adverse effects of tower construction and proliferation. Connecticut's jurisdiction over tower siting does not pose an obstacle to the goal of achieving an efficient and competitive infrastructure; rather, it promotes this goal consistent with assuring the protection of the environment and residents of Connecticut.

In enacting the Public Utility Environmental Standards Act ("PUESA") (Exh. A), which created the Council and governs the siting of telecommunication towers in Connecticut, the Connecticut General Assembly found that

> telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that the continued operation and development of such . . . towers, if not properly planned and controlled, could adversely affect the quality of the environment, the ecological, scenic, historic and recreational values of the state.

Conn. Gen. Stat. § 16-50g. Accordingly, the purposes of the PUESA are:

> To provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services as least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state; to encourage research to develop new and improved methods of . . . transmitting and receiving . . . telecommunications with minimal damage to the environment and other values described above; [and] to promote the sharing of towers for fair consideration where technically, legally, environmentally and economically feasible to avoid the unnecessary proliferation of towers in the state particularly where installation of such towers would adversely impact class I and II watershed lands, and acquires. . . .

Id.

Under the PUESA, before a cellular tower may be constructed in Connecticut, a certificate of environmental compatibility and public need must be obtained from the Council. Conn. Gen. Stat. § 16-50k(a).[1] In issuing a certificate, the Council must balance the public need for the facility against its potential adverse environmental effects. Conn. Gen. Stat. § 16-50p(a). In considering the issue of public need for cellular towers, the Council has consistently recognized that the Commission's finding of a public need for the development of cellular service and preemption of technical standards and market structure.

The danger of the proliferation of telecommunication towers is a serious regulatory concern in Connecticut. To guard against unnecessary proliferation, the Council is required to consider, prior to approving an application for the siting of a tower, (a) the feasibility of

[1] The requirement of Council approval extends to modifications of towers. The Council has adopted regulations that streamlines the regulatory approval process for certain modifications of towers deemed not to have a substantial adverse envirnmental effect. Conn. Agencies Regs. §§ 16-50j-71 to 16-60j-73 (Exh. B).

requiring the applicant to share an existing tower rather than constructing a new tower; (b) the degree to which, if constructed, the new tower could be shared by others; and (c) the extent to which the new tower would be located in an undisturbed area possessing scenic quality. Conn. Gen. Stat. § 16-50p(b)(1). Moreover, the Council may deny an application if an existing tower could be shared by the applicant rather than constructing a new tower or if the applicant is unwilling to cooperate in future shared use of the tower. Id. Similarly, the Council may impose reasonable conditions on a certificate holder to promote the immediate and future sharing of the tower. Conn. Gen. Stat. § 16-50p(b)(2).

In addition to the certification process, Connecticut has enacted legislation to promote sharing of all towers used for the "transmitting or receiving signals in the electromagnetic spectrum pursuant to a Federal Communications Commission license." Conn. Gen. Stat. § 16-50aa(b). The Connecticut General Assembly has expressly found that tower sharing is in the public interest, Conn. Gen. Stat. § 16-50aa(a), and has erected a framework for Council approval of private tower sharing agreements. Any person having a license from the Commission may submit a tower sharing proposal to the owner of a tower, and the Council is empowered to arbitrate any question regarding the feasibility of the sharing of the tower. If the proposal is technically, legally, environmentally and economically feasible, the Council may order the shared use. Conn. Gen. Stat. § 16-50aa(c)(1), (2). Any dispute over compensation for the shared use of the tower may be submitted to arbitration and court review. Conn. Gen. Stat. § 16-50aa(d).

The regulatory framework developed in Connecticut does not impose an unreasonable obstacle to the promotion of the telecommunications infrastructure. Rather, it provides a mechanism for ensuring that the development of that infrastructure is consistent with the public interest. If the Commission were to preempt state authority over tower siting, this balance would be lost. In particular for Connecticut, the positive efforts aimed at avoiding unnecessary proliferation of towers and its adverse impact on the environment would be completely undermined. Thus, instead of serving the public interest, as suggested by CTIA, preemption would seriously and irreparably impair these important public interests.

Indeed, not only has the Council's regulation of tower siting not posed a barrier to entry, the Council's experience has been that proper state regulation fosters healthy competition and assists the industry in developing efficient tower networks. The number of new towers developed, shared facilities, and alternative tower arrangements are demonstrable proof that this process has assisted the telecommunications industry in Connecticut in (1) increasing the effective utilization of existing towers; (2) finding and developing new sites where and when necessary; and (3) selecting better and less costly alternatives when available. Connecticut's experience shows that there is no conflict between state and federal law and that state regulation of tower siting is consistent with federal law. Rather than forming an obstacle to the realization to congressional objectives, the Council's regulation of tower siting has helped implement those goals.

State regulation of tower siting offers a number of advantages. The Council brings to the question of tower siting a statewide perspective, permitting it to consider alternatives, the

potential for tower sharing, and environmental impacts that may transcend municipal boundaries. At the same time, the Council retains a balanced sensitivity to local interests that simply is not possible at a federal level. See Conn. Gen. Stat. § 16-50x(a).

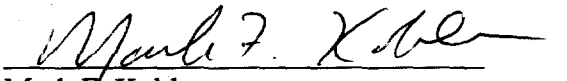
The Council maintains that the regulation of tower siting is best performed by state government using, as does the Council, uniform and consistent regulations to (1) systematically assess and mitigate environmental and aesthetic impacts of local concern; (2) identify and facilitate the use of more efficient alternatives; and (3) act as a clearing house to maximize the use and sharing of existing towers wherever possible to avoid the costly practice of new tower construction. Preemption of the Council's jurisdiction will result in the loss of the advantages of effective state oversight without any significant gain in promoting the development of the telecommunications infrastruture. The Commission should therefore decline to take the extraordinary actions sought by CTIA.

IV. CONCLUSION

For the foregoing reasons, the Attorney General and the Council requests that the Commission deny the CTIA's petition for rulemaking.

RICHARD BLUMENTHAL,
ATTORNEY GENERAL OF THE
STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

By: 

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CERTIFICATE OF SERVICE

This certifies that the foregoing Comments were served by first-class mail on the 16th day of February, 1995 on the following:

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Assistant Attorney General

EXHIBIT A

Public Utiltiy Environmental Standards Act
Conn. Gen. Stat. §§ 16-50j to 16-50aa

Sec. 16-50e. Notices to town clerk. A copy of each notice required by sections 16-50c and 16-50d shall be sent by the party giving such notice to the town clerk of the municipality in which the land is situated and such town clerk shall make all such notices part of the appropriate land records.

(1967, P.A. 577, S. 7.)

Sec. 16-50f. Solicitation of insurance applications from employees of public service companies. Payroll deductions. (a) Any public service company providing payroll deduction services for its employees for premiums on individual policies of any line of insurance shall permit solicitation of applications for such policies by any licensed insurer or representative of the insurer. Any such insurer or representative of the insurer who claims he has been denied the right to solicit applications for insurance by a public service company in violation of this section shall file a complaint in writing with the insurance commissioner who shall cause an investigation to be made, and if the commissioner determines that the public service company has violated this section, he shall so notify the department of public utility control which shall make such order as is necessary to carry out the provisions of this section. This section shall not be construed to invalidate, nor require any public service company to change, a program of payroll deductions for employees' individual insurance policies in existence on October 1, 1969.

(b) Notwithstanding the provisions of subsection (a) of this section, a public service company may provide payroll deductions for its employees in connection with premiums for a mass merchandising or group plan of any line of insurance, provided that the group covered by such insurance consists predominantly of employees of the public service company.

(1969, P.A. 210, S. 1, 2; 1971, P.A. 761; P.A. 75-486, S. 1, 69; P.A. 77-614, S. 162, 163, 610; P.A. 79-129; P.A. 80-482, S. 86, 348; P.A. 82-150, S. 8.)

History: 1971 act added Subsec. (b) re payroll deductions for group insurance; P.A. 75-486 replaced public utilities commission with public utilities control authority; P.A. 77-614 replaced authority with division of public utility control within the department of business regulation, made insurance department a division of that department and retained insurance commissioner as its head, effective January 1, 1979; P.A. 79-129 removed from Subsec. (b) provision prohibiting sale of insurance on company property during normal working hours; P.A. 80-482 made divisions of public utility control and insurance independent departments and deleted references to abolished department of business regulation; P.A. 82-150 made technical changes.

CHAPTER 277a*

PUBLIC UTILITY ENVIRONMENTAL STANDARDS ACT

*Applicability of chapter discussed. 165 C. 687. Cited. 177 C. 623, 624; 180 C. 474, 477. Conn. public utility environmental standards act, Sec. 16-50g et seq. cited. 212 C. 157, 159. Public utility environmental standards act (Secs. 16-50g–16-50z) cited. 215 C. 474, 482, 483. Cited. 220 C. 516, 518.

Sec. 16-50g et seq., Public utility environmental standards act (PUESA) cited. 20 CA 474, 476–478, 485, 487, 489.

Attempted taking of easement for future facility where procedure prescribed by this chapter was not followed was an abuse of the plaintiff's powers of eminent domain. 35 CS 303, 306, 310.

Sec. 16-50g. Legislative finding and purpose. The legislature finds that power generating plants and transmission lines for electricity and fuels, community antenna television towers and telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment, the ecological, scenic, historic and recreational values of the state. The purposes of this chapter are: To provide for the balancing of the need for

...y of each notice required by sections 16-50k ... notice to the town clerk of the municipality ...lerk shall make all such notices part of the ...

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adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state; to encourage research to develop new and improved methods of generating, storing and transmitting electricity and fuel and of transmitting and receiving television and telecommunications with minimal damage to the environment and other values described above; to promote the sharing of towers for fair consideration wherever technically, legally, environmentally and economically feasible to avoid the unnecessary proliferation of towers in the state particularly where installation of such towers would adversely impact class I and II watershed lands, and aquifers; to require annual forecasts of the demand for electric power, together with identification and advance planning of the facilities needed to supply that demand and to facilitate local, regional, state-wide and interstate planning to implement the foregoing purposes.

(1971, P.A. 575, S. 1; P.A. 75-375, S. 1, 12; P.A. 76-359, S. 1, 7; P.A. 77-218, S. 1; P.A. 89-45, S. 1, 4.)

History: P.A. 75-375 deleted "orderly processes" with regard to balancing utility services and environmental concerns and modified reference provision to utility services with "at the lowest reasonable cost to consumers"; P.A. 76-359 included in purposes of chapter provision re forecasts of power demands and advance planning for necessary facilities; P.A. 77-218 included references to community cable television and telecommunications services and facilities; P.A. 89-45 included provision of chapter re promotion of sharing of towers.

Cited. 180 C. 474, 477.
Cited. 20 CA 474, 485, 489.
Cited. 35 CS 303, 306.

Sec. 16-50h. Short title. This chapter shall be known and may be cited and referred to as the "Public Utility Environmental Standards Act".

(1971, P.A. 575, S. 2.)

Sec. 16-50i. Definitions. As used in this chapter:

(a) "Facility" means: (1) An electric transmission line of a design capacity of sixty-nine kilovolts or more, including associated equipment but not including a transmission line tap, as defined in subsection (e) of this section; (2) a fuel transmission facility, except a gas transmission line having a design capability of less than two hundred pounds per square inch gauge pressure; (3) any electric generating or storage facility using any fuel, including nuclear materials, including associated equipment for furnishing electricity but not including an emergency generating device, as defined in subsection (f) of this section or a facility (i) owned and operated by a private power producer, as defined in section 16-243b, (ii) which is a qualifying small power production facility or a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978, as amended, or a facility determined by the council to be primarily for a producer's own use and (iii) which has, in the case of a facility utilizing renewable energy sources, a generating capacity of one megawatt of electricity or less and, in the case of a facility utilizing cogeneration technology, a generating capacity of twenty-five megawatts of electricity or less; (4) any electric substation or switchyard designed to change or regulate the voltage of electricity at sixty-nine kilovolts or more or to connect two or more electric circuits at such voltage, which substation or switchyard may have a substantial adverse environmental effect, as determined by the council established under section 16-50j, and other facilities which may have a substantial adverse environmental effect as the council may, by regulation, prescribe; (5) such community antenna television towers and head-end structures, including associated equipment, which

may have a substantial adverse environmental effect, as said council shall, by regulation, prescribe; and (6) such telecommunication towers, including associated telecommunications equipment, owned or operated by the state, a public service company, as defined in section 16-1, or a person, firm or corporation certified by the department of public utility control to provide intrastate telecommunications services pursuant to sections 16-247f to 16-247h, inclusive, or used in a cellular system, as defined in the Code of Federal Regulations Title 47, Part 22, as amended, which may have a substantial adverse environmental effect, as said council shall, by regulation, prescribe;

(b) "Municipality" means a city, town or borough of the state and "municipal" has a correlative meaning;

(c) "Person" means any individual, corporation, joint venture, public benefit corporation, political subdivision, governmental agency or authority, municipality, partnership, association, trust or estate and any other entity, public or private, however organized;

(d) "Modification" means a significant change or alteration in the general physical characteristics of a facility;

(e) "Transmission line tap" means an electrical transmission line not requested by an applicant to be treated as a facility that has the primary function, as determined by the council, of interconnecting a private power producing or cogeneration facility to the electrical power grid serving the state, and does not have a substantial adverse environmental effect, as determined by the council based on a review of the line's proposed purpose, the line's proposed length, the number and type of support structures, the number of manholes required for the proposed line, the necessity of entering a right-of-way including any easements or land acquisition for any construction or maintenance on the proposed line, and any other environmental, health or public safety factor considered relevant by the council; and

(f) "Emergency generating device" means an electric generating device with a generating capacity of five megawatts or less, installed primarily for the purpose of producing emergency backup electrical power for not more than five hundred hours per year, and that (1) does not have a substantial adverse environmental effect, as determined by the council, or (2) is owned and operated by an entity other than an electric or gas company or (3) is under construction or in operation prior to May 2, 1989.

(1971, P.A. 575, S. 3; P.A. 73-41, S. 1, 2; 73-458, S. 1; P.A. 76-317, S. 1, 2; P.A. 77-218, S. 2; P.A. 79-214, S. 3; 79-470, P.A. 80-81; P.A. 81-439, S. 4, 14; P.A. 83-569, S. 2, 17; P.A. 84-249, S. 1, 3; P.A. 86-336, S. 7, 19; P.A. 89-61, S. 1, 2; P.A 94-74, S. 6, 11.)

History: P.A. 73-41 included gas transmission lines with design capability of two hundred pounds per square inch gauge pressure or more in definition of "facility"; P.A. 73-458 added "which may have a substantial adverse environmental effect" in Subdiv. (4) of definition of "facility" and defined "modification"; P.A. 76-317 deleted references to length of lines in Subdivs. (1) and (2) of "facility" definition and rewording provision re pressure of gas transmission lines; P.A. 77-218 added Subdivs. (5) and (6) re community antenna television and telecommunications towers in definition of "facility"; P.A. 79-214 excluded facilities producing one or less megawatt of electricity by cogeneration technology from definition of "facility"; P.A. 79-470 changed height limit for telecommunications towers from one hundred to fifty feet in Subdiv. (6) of "facility" definition; P.A 80-81 deleted reference to tower height in Subdiv. (6) of "facility" definition altogether and included reference to associated equipment; P.A. 81-439 excluded cogeneration facility having capacity of ten megawatts, rather than one megawatt, from definition of facility and limited exclusion to cogeneration and renewable energy facilities owned and operated by private power producers and qualifying under the Public Utility Regulatory Policies Act of 1978; P.A. 83-569 redefined "facility" to include certain substations and switchyards; P.A. 84-249 amended Subdiv. (6) of Subsec. (a) to include telecommunication towers used in a cellular system in the definition of "facility"; P.A. 86-336 amended Subpara. (iii) of Subdiv. (3) of Subsec. (a) to increase from ten to twenty-five megawatts of electricity, the maximum generating capacity which a facility utilizing cogeneration technology must have in order to be excluded from definition of "facility"; P.A. 89-61 added provisions in Subsec. (a) eliminating transmissions line taps and emergency generating devices from the jurisdiction of the council and added new Subsecs. (e) and (f) defining a transmission line tap and an emergency generating device; P.A. 94-74 redefined "facility" to include provision re persons, firms or corporations certified to provide intrastate telecommunication services, effective July 1, 1994.

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76-317, S. 1, 2; P.A. 77-218, S. 2; P.A. 79-214, S. 3; 79-470,
249, S. 1, 3; P.A. 86-336, S. 7, 19; P.A. 89-61, S. 1, 2; P.A

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towers in definition of "facility"; P.A. 79-214 excluded
ion technology from definition of "facility"; P.A. 79-470
ed to fifty feet in Subdiv. (6) of "facility" definition; P.A
ity" definition altogether and included reference to associated
capacity of ten megawatts, rather than one megawatt, from
ewable energy facilities owned and operated by private power
ies Act of 1978; P.A. 83-569 redefined "facility" to include
. (6) of Subsec. (a) to include telecommunication towers used
ended Subpara. (iii) of Subdiv. (3) of Subsec. (a) to increase
generating capacity which a facility utilizing cogeneration
facility"; P.A. 89-61 added provisions in Subsec. (a) eliminat-
the jurisdiction of the council and added new Subsecs. (e) and
device; P.A. 94-74 redefined "facility" to include provision re
telecommunication services, effective July 1, 1994.

Cited. 20 CA 474, 488. Cited. 21 CA 85, 87
Subsec. (a):
Cited. 212 C. 157, 159.
Cited. 20 CA 474, 476. Subdiv. (3) cited. Id., 474, 475, 477, 487.
Cited. 35 CS 303, 307.

Sec. 16-50j. Connecticut Siting Council. Regulations. Consultation with state agencies. (a) There is established a "Connecticut Siting Council", hereinafter referred to as the "council", which shall be within the department of public utility control.

(b) Except for proceedings under chapter 445, this subsection and subsection (c) of this section and sections 22a-134cc, 22a-134ff and 22a-163 to 22a-163u, inclusive, the council shall consist of: (1) The commissioner of environmental protection, or his designee; (2) the chairman, or his designee, of the Public Utilities Control Authority; (3) one designee of the speaker of the house and one designee of the president pro tempore of the senate; and (4) five members of the public, to be appointed by the governor, at least two of whom shall be experienced in the field of ecology, and not more than one of whom shall have affiliation, past or present, with any utility or governmental utility regulatory agency, or with any person owning, operating, controlling, or presently contracting with respect to a facility, a hazardous waste facility as defined in section 22a-115, a regional low-level radioactive waste facility as defined in section 22a-163a or ash residue disposal area.

(c) For proceedings under chapter 445, subsection (b) of this section, this subsection and sections 22a-134cc, 22a-134ff and 22a-163 to 22a-163u, inclusive, the council shall consist of (1) the commissioners of public health and addiction services and public safety or their designated representatives; (2) the designees of the speaker of the house of representatives and the president pro tempore of the senate as provided in subsection (b) of this section; (3) the five members of the public as provided in subsection (b) of this section and (4) four ad hoc members, three of whom shall be electors from the municipality in which the proposed facility is to be located and one of whom shall be an elector from a neighboring municipality likely to be most affected by the proposed facility. The municipality most affected by the proposed facility shall be determined by the permanent members of the council. If any one of the five members of the public or of the designees of the speaker of the house of representatives or the president pro tempore of the senate resides (1) in the municipality in which a hazardous waste facility is proposed to be located for a proceeding concerning a hazardous waste facility or in which a low-level radioactive waste facility is proposed to be located for a proceeding concerning a low-level radioactive waste facility, or (2) in the neighboring municipality likely to be most affected by the proposed facility, the appointing authority shall appoint a substitute member for the proceedings on such proposal. If any appointee is unable to perform his duties on the council due to illness, or has a substantial financial or employment interest which is in conflict with the proper discharge of his duties under this chapter, the appointing authority shall appoint a substitute member for proceedings on such proposal. An appointee shall report any substantial financial or employment interest which might conflict with the proper discharge of his duties under this chapter to the appointing authority who shall determine if such conflict exists. If any state agency is the applicant, an appointee shall not be deemed to have a substantial employment conflict of interest because of employment with the state unless such appointee is directly employed by the state agency making the application. Ad hoc members shall be appointed by the chief elected official of the municipality they represent and shall continue their membership until the council issues a letter of completion of the development and management plan to the applicant.

(d) For proceedings under sections 22a-285d to 22a-285h, inclusive, the council shall consist of (1) the commissioners of public health and addiction services and public safety or their designated representatives; (2) the designees of the speaker of the house of representa-

tives and the president pro tempore of the senate as provided in subsection (b) of this section, and (3) five members of the public as provided in subsection (b) of this section. If any one of the five members of the public or of the designees of the speaker of the house of representatives or the president pro tempore of the senate resides in the municipality in which a ash residue disposal area is proposed to be located the appointing authority shall appoint a substitute member for the proceedings on such proposal. If any appointee is unable to perform his duties on the council due to illness, or has a substantial financial or employment interest which is in conflict with the proper discharge of his duties under sections 22a-285d to 22a-285h, inclusive, the appointing authority shall appoint a substitute member for proceedings on such proposal. An appointee shall report any substantial financial or employment interest which might conflict with the proper discharge of his duties under said sections to the appointing authority who shall determine if such conflict exists. If any state agency is the applicant, an appointee shall not be deemed to have a substantial employment conflict of interest because of employment with the state unless such appointee is directly employed by the state agency making the application.

(e) The chairman of the council shall be appointed by the governor from among the five public members appointed by him, with the advice and consent of the house or senate, and shall serve as chairman at the pleasure of the governor.

(f) The public members of the council, including the chairman, the members appointed by the speaker of the house and president pro tempore of the senate and the four ad hoc members specified in subsection (c) of this section, shall be compensated for their attendance at public hearings, executive sessions, or other council business as may require their attendance at the rate of one hundred fifty dollars, provided in no case shall the daily compensation exceed one hundred fifty dollars. The annual compensation for any member for attending such hearings shall not exceed twelve thousand dollars a year.

(g) The council shall, in addition to its other duties prescribed in this chapter, adopt, amend, or rescind suitable regulations to carry out the provisions of this chapter and the policies and practices of the council in connection therewith, and appoint and prescribe the duties of such staff as may be necessary to carry out the provisions of this chapter. The chairman of the council, with the consent of five or more other members of the council, may appoint an executive director, who shall be the chief administrative officer of the Connecticut Siting Council. The executive director shall be exempt from classified service.

(h) Prior to commencing any hearing pursuant to section 16-50m, the council shall consult with and solicit written comments from the department of environmental protection, the department of public health and addiction services, the Council on Environmental Quality, the department of public utility control, the office of policy and management, the department of economic development and the department of transportation. In addition, the department of environmental protection shall have the continuing responsibility to investigate and report to the council on all applications which prior to October 1, 1973, were within the jurisdiction of said department of environmental protection with respect to the granting of a permit. Copies of such comments shall be made available to all parties prior to the commencement of the hearing. Subsequent to the commencement of the hearing, said departments, council and commissions may file additional written comments with the council within such period of time as the council designates. All such written comments shall be made part of the record provided by section 16-50o.

(1971, P.A. 575, S. 4; 1972, P.A. 228; June, 1972, P.A. 1, S. 18; P.A. 73-458, S. 2; P.A. 75-375, S. 2, 12; P.A. 76-282, S 1, 3; 76-319, S. 1, 2; P.A. 77-223, S. 1, 2; 77-614, S. 19, 155, 162, 284, 323, 587, 610; P.A. 78-303, S. 85, 136; P.A. 80-482, S. 87, 348; P.A. 81-369, S. 3, 20; P.A. 82-209, S. 2, 3; P.A. 83-569, S. 3, 17; P.A. 86-336, S. 1, 19; P.A. 87-540, S. 24, 26; P.A. 88-102, S. 1, 2; 88-161, S. 1, 2; 88-361, S. 23, 29; P.A. 89-384, S. 11, 15; P.A. 93-381, S. 9, 39.)

provided in subsection (b) of this section,
subsection (b) of this section. If any one of
of the speaker of the house of representa-
resides in the municipality in which a ash
appointing authority shall appoint a substi-
. If any appointee is unable to perform his
substantial financial or employment interest
of his duties under sections 22a-285d to
all appoint a substitute member for proceed-
t any substantial financial or employment
harge of his duties under said sections to the
ch conflict exists. If any state agency is the
have a substantial employment conflict of
unless such appointee is directly employed by

pointed by the governor from among the five
vice and consent of the house or senate, and
governor.

ding the chairman, the members appointed
tempore of the senate and the four ad hoc
ction, shall be compensated for their atten-
r other council business as may require their
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annual compensation for any member for
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y out the provisions of this chapter and the
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e or more other members of the council, may
chief administrative officer of the Connecti-
l be exempt from classified service.

nt to section 16-50m, the council shall con-
department of environmental protection, the
vices, the Council on Environmental Quality,
office of policy and management, the depart-
rtment of transportation. In addition, the
have the continuing responsibility to inves-
ions which prior to October 1, 1973, were
environmental protection with respect to the
shall be made available to all parties prior to
t to the commencement of the hearing, said
additional written comments with the coun-
signates. All such written comments shall be
16-50o.

S. 18; P.A. 73-458, S. 2; P.A. 75-375, S. 2, 12; P.A. 76-282, S.
162, 284, 323, 587, 610; P.A. 78-303, S. 85, 136; P.A. 80-482,
83-569, S. 3, 17; P.A. 86-336, S. 1, 19; P.A. 87-540, S. 24, 26;
P.A. 89-384, S. 11, 15; P.A. 93-381, S. 9, 39.)

History: 1972 acts replaced reference to administrative head of projected environment department and of department of agriculture and natural resources with commissioner of environmental protection and included members appointed by house speaker and senate president pro tem in compensation provision under Subsec. (d), replaced water resources, clean air and state park and forest commissions and board of fisheries and game with department of environmental protection and deleted "if and when established" referring to council on environmental quality in Subsec. (f); P.A. 73-458 required that council consult with public utilities and Connecticut development commissions and with office of state planning and added provision re continued responsibility of environmental protection department in Subsec. (f); P.A. 75-375 substituted Sec. 16-50m for 16-50p, required that copies of comments be available to parties before hearing and provided for additional written comments; P.A. 76-282 added reference to compensation for "such other council business as may require their attendance" in Subsec. (d); P.A. 76-319 replaced public utilities control commission with public utilities control authority pursuant to requirement of P.A. 75-486 and office of state planning with department of planning and energy policy and substituted "solicit written comments" for "obtain in writing the comments" in Subsec. (f); P.A. 77-223 required council to consult with department of transportation in Subsec. (f); P.A. 77-614 and P.A. 78-303 replaced department of planning and energy policy with office of policy and management and, effective January 1, 1979, replaced department of commerce with department of economic development, replaced public utilities control authority with division of public utility control within the department of business regulation, and replaced department of health with department of health services; P.A. 80-482 made division of public utility control an independent department and deleted reference to abolished department of business regulation; P.A. 81-369 replaced power facility evaluation council with Connecticut Siting Council, inserted new Subsec. (c) re council as constituted for proceedings under Ch. 445, redesignating remaining Subsecs. accordingly and required compensation for ad hoc members; P.A. 82-209 amended Subsec. (c) to add provisions re determination of conflict of interest and re appointment of substitute member where conflict of interest exists; P.A. 83-569 increased members compensation for hearings to one hundred dollars and limited annual compensation for hearings to not more than four thousand dollars; P.A. 86-336 amended Subsec. (e) to increase maximum annual compensation from $4000 to $8000; P.A. 87-540 added references to regional low-level radioactive waste facility, effective upon designation of Connecticut as a host state by the Northeast Interstate Low-Level Radioactive Waste Commission, i.e. December 23, 1987; P.A. 88-102 added a provision to Subsec. (f) which enabled the Connecticut Siting Council to appoint an executive director and provided that the executive director shall be exempt from classified service; P.A. 88-161 amended Subsec. (e) to authorize compensation for a member's attendance at executive sessions or other council business which requires attendance, to increase daily compensation to one hundred fifty dollars and to increase annual compensation to a maximum of twelve thousand dollars; P.A. 88-361 made technical changes in Subsec. (c); P.A. 89-384 authorized selection of public member who is affiliated with an ash residue disposal area and inserted new Subsec. (d) re proceedings under Secs. 22a-285d to 22a-285h, inclusive, relettering former Subsecs. (d) to (g) accordingly; P.A. 93-381 replaced department and commissioner of health services with department and commissioner of public health and addiction services, effective July 1, 1993.

See title 2c re termination under "Sunset Law."
See Sec. 4-9a for definition of "public member."

Cited. 180 C. 474, 477. Cited. 216 C. 1, 2.
Subsec. (g):
Cited. 212 C. 157, 160.
Cited. 20 CA 474, 486, 491.

Sec. 16-50k. Certificate of environmental compatibility and public need. Transfer. Amendment. Excepted matters. Waiver. (a) Except as provided in subsection (b) of section 16-50z, no person shall exercise any right of eminent domain in contemplation of, commence the preparation of the site for, or commence the construction or supplying of a facility, or any modification of a facility, that may, as determined by the council, have a substantial adverse environmental effect, in the state without having first obtained a certificate of environmental compatibility and public need, hereinafter referred to as a "certificate", issued with respect to such facility or modification by the council. Any facility with respect to which a certificate is required shall thereafter be built, maintained and operated in conformity with such certificate and any terms, limitations or conditions contained therein.

(b) A certificate may be transferred, subject to the approval of the council, to a person who agrees to comply with the terms, limitations and conditions contained therein. The council shall not approve any such transfer if it finds that such transfer was contemplated at or prior to the time the certificate was issued and such fact was not adequately disclosed during the certification proceeding.

(c) A certificate issued pursuant to this chapter may be amended as provided in this chapter.

(d) This chapter shall apply to any facility described in subdivisions (1) to (3), inclusive, of subsection (a) of section 16-50i, the construction of which is commenced on or after April

1, 1972, and to any such facility the construction of which is approved by a municipality that has commenced the sale of bonds or bond anticipation notes on or after April 1, 1972, the proceeds or part of the proceeds of which are to finance such construction. This chapter shall apply to any facility described in subdivision (4) of said subsection (a) of section 16-50i, the construction of which is commenced on or after July 1, 1983, and to any such facility the construction of which is approved by a municipality that has commenced the sale of bonds or bond anticipation notes on or after July 1, 1983, the proceeds or part of the proceeds of which are to finance such construction. This chapter shall apply to any facility described in subdivisions (5) and (6) of said subsection, the construction of which is commenced on or after October 1, 1977, and to any such facility the construction of which is approved by a municipality that has commenced the sale of bonds or bond anticipation notes on or after October 1, 1977, the proceeds or part of the proceeds of which are to finance such construction. This chapter shall apply to the modification of a facility described in subdivisions (1) to (3), inclusive, of said subsection (a) for which construction is commenced on or after April 1, 1972, modifications of a facility described in subdivision (4) of said subsection (a) for which construction is commenced on or after July 1, 1983, and modifications of a facility described in subdivisions (5) and (6) of said subsection (a) of section 16-50i, for which construction is commenced on or after October 1, 1977, whenever such modification either alone or in combination with existing or other proposed facility modifications may, as determined by the council, have a substantial adverse environmental effect. This chapter shall not apply to any matter over which any agency, department or instrumentality of the federal government has exclusive jurisdiction, or has jurisdiction concurrent with that of the state and has exercised such jurisdiction, to the exclusion of regulation of such matter by the state.

(e) Any person intending to construct a facility excluded from one or more provisions of this chapter may, to the extent permitted by law, elect to waive such exclusion by delivering notice of such waiver to the council. Such provisions shall thereafter apply to each facility identified in such notice from the date of its receipt by the council.

(1971, P.A. 575, S. 5; P.A. 73-458, S. 3; P.A. 76-359, S. 4, 7; P.A. 77-218, S. 3; P.A. 83-569, S. 15, 17.)

History: P.A. 73-458 added exception re Sec. 16-50y in Subsec. (a) and qualified applicability of chapter in Subsec. (d) with regard to modification of facilities; P.A. 76-359 replaced reference to Sec. 16-50y in Subsec. (a) with reference to Subsec. (b) of Sec. 16-50z; P.A. 77-218 clarified applicability provisions of Subsec. (d); P.A. 83-569 amended Subsec. (d) to limit application of chapter to facilities described in Subdiv. (4) of Subsec. (a) of Sec. 16-50i (substations and switchyards) to those constructed on or after July 1, 1983.

Cited. 177 C. 623, 624. Cited. 192 C. 591, 595. Cited. 215 C. 474, 476.
Cited. 35 CS 303, 307, 308, 311.
Subsec. (a):
Cited. 177 C. 623, 630. Cited. 220 C. 516, 521.
Subsec. (b):
Cited. 216 C. 1, 3, 8, 9.
Subsec. (c):
Cited. 177 C. 623, 626, 630.
Subsec. (d):
A period of protection not provided when construction commenced prior to April 1, 1972. 165 C. 687.

Sec. 16-50l. Application for certificate. Notice. Application or resolution for amendment of certificate. (a) To initiate a certification proceeding, an applicant for a certificate shall file with the council an application, in such form as the council may prescribe, accompanied by a fee of not more than twenty-five thousand dollars, which fee shall be established in accordance with section 16-50t, containing such information as the applicant may consider relevant and the council or any department or agency of the state exercising environmental controls may by regulation require, including the following information: (1) In the case of facilities described in subdivisions (1), (2) and (4) of subsection (a) of section 16-50i: (A) A description, including estimated costs, of the proposed transmission line, substation or switchyard, covering, where applicable underground cable sizes and specifica-

...ich is approved by a municipality that ... notes on or after April 1, 1972, the ... such construction. This chapter shall ... subsection (a) of section 16-50i, the ... 1, 1983, and to any such facility the ... has commenced the sale of bonds or ...ceeds or part of the proceeds of which ...ly to any facility described in subdivi... of which is commenced on or after ...ion of which is approved by a munici...ticipation notes on or after October 1, ...are to finance such construction. This ...y described in subdivisions (1) to (3), ...on is commenced on or after April 1, ...ion (4) of said subsection (a) for which ...and modifications of a facility described ...ction 16-50i, for which construction is ...r such modification either alone or in ...y modifications may, as determined by ...l effect. This chapter shall not apply to ...trumentality of the federal government ...rent with that of the state and has exer...on of such matter by the state.

...excluded from one or more provisions of ...ct to waive such exclusion by delivering ...ns shall thereafter apply to each facility ...t by the council.

...; P.A. 77-218, S. 3; P.A. 83-569, S. 15, 17.)

...and qualified applicability of chapter in Subsec. (d) with ...Sec. 16-50y in Subsec. (a) with reference to Subsec. (b) of ...(d); P.A. 83-569 amended Subsec. (d) to limit application ...16-50i (substations and switchyards) to those constructed on

...C. 474, 476.

...ed prior to April 1, 1972. 165 C. 687.

...**Notice. Application or resolution for** ...ification proceeding, an applicant for a cer..., in such form as the council may prescribe, ...-five thousand dollars, which fee shall be ...ntaining such information as the applicant ...partment or agency of the state exercising ...ve, including the following information: (1) ...(1), (2) and (4) of subsection (a) of section ... costs, of the proposed transmission line. ...cable underground cable sizes and specifica-

tions, overhead tower design and appearance and heights, if any, conductor sizes, and initial and ultimate voltages and capacities; (B) a statement and full explanation of why the proposed transmission line, substation or switchyard is necessary and how the facility conforms to a long-range plan for expansion of the electric power grid serving the state and interconnected utility systems, that will serve the public need for adequate, reliable and economic service; (C) a map of suitable scale of the proposed routing or site, showing details of the rights-of-way or site in the vicinity of settled areas, parks, recreational areas and scenic areas, and showing existing transmission lines within one mile of the proposed route or site; (D) justification for adoption of the route or site selected, including comparison with alternative routes or sites which are environmentally, technically and economically practical; (E) a description of the effect of the proposed transmission line, substation or switchyard on the environment, ecology, and scenic, historic and recreational values; (F) a justification for overhead portions, if any, including life-cycle cost studies comparing overhead alternatives with underground alternatives, and effects described in subdivision (E) of undergrounding; (G) a schedule of dates showing the proposed program of right-of-way or property acquisition, construction, completion and operation; and (H) identification of each federal, state, regional, district and municipal agency with which proposed route or site reviews have been undertaken, including a copy of each written agency position on such route or site; and (2) in the case of facilities described in subdivision (3) of subsection (a) of section 16-50i: (A) A description of the proposed electric generating or storage facility; (B) a statement and full explanation of why the proposed facility is necessary; (C) a statement of loads and resources as described in section 16-50r; (D) safety and reliability information, including planned provisions for emergency operations and shutdowns; (E) estimated cost information, including plant costs, fuel costs, plant service life and capacity factor, and total generating cost per kilowatt-hour, both at the plant and related transmission, and comparative costs of alternatives considered; (F) a schedule showing the program for design, material acquisition, construction and testing, and operating dates; (G) available site information, including maps and description and present and proposed development, and geological, scenic, ecological, seismic, biological, water supply, population and load center data; (H) justification for adoption of the site selected, including comparison with alternative sites; (I) design information, including description of facilities, plant efficiencies, electrical connections to system, and control systems; (J) description of provisions, including devices and operations, for mitigation of the effect of the operation of the facility on air and water quality, for waste disposal, and for noise abatement, and information on other environmental aspects; (K) a listing of federal, state, regional, district and municipal agencies from which approvals either have been obtained or will be sought covering the proposed facility, copies of approvals received and the planned schedule for obtaining those approvals not yet received.

(b) Each application shall be accompanied by proof of service of a copy of such application on: (1) Each municipality in which any portion of such facility is to be located, both as primarily proposed and in the alternative locations listed, which copy shall be served on the chief executive officer of the municipality and shall include notice of the date on or about which the application is to be filed, and the zoning commissions, planning commissions, planning and zoning commissions, conservation commissions and inland wetlands agencies of each such municipality, and the regional planning agencies which encompass each such municipality; (2) the attorney general; (3) each member of the legislature in whose assembly or senate district the facility or any alternative location listed in the application is to be located; (4) any agency, department or instrumentality of the federal government that has jurisdiction, whether concurrent with the state or otherwise, over any matter that would be affected by such facility; (5) each state department, agency and commission named in subsection (h) of section 16-50j; and (6) such other state and municipal bodies as the council may by regulation designate. A notice of such application shall be given to the general pub-

lic, in municipalities entitled to receive notice under subdivision (1) of this subsection, by the publication of a summary of such application and the date on or about which it will be filed. Such notice shall be published under the regulations to be promulgated by the council, in such form and in such newspapers as will serve substantially to inform the public of such application and to afford interested persons sufficient time to prepare for and to be heard at the hearing prescribed in section 16-50m. Such notice shall be published in not less than ten-point type. A notice of such an application for a certificate for a facility described in subdivision (3), (4), (5) or (6) of subsection (a) of section 16-50i shall also be sent, by certified or registered mail, to each person appearing of record as an owner of property which abuts the proposed primary or alternative sites on which the facility would be located. Such notice shall be sent at the same time that notice of such application is given to the general public. Notice of an application for a certificate for a facility described in subdivision (1) of subsection (a) of section 16-50i shall also be provided to each electric company customer in the municipality where the facility is proposed to be placed. Such notice shall (A) be provided on a separate enclosure with each customer's monthly bill for one or more months, (B) be provided by the electric company not earlier than sixty days prior to filing the application with the council, but not later than the date that the application is filed with the council, and (C) include: A brief description of the project, including its location relative to the affected municipality and adjacent streets; a brief technical description of the project including its proposed length, voltage, and type and range of heights of support structures or underground configuration; the reason for the project; the address and a toll-free telephone number of the applicant by which additional information about the project can be obtained; and a statement in print no smaller than twenty-four-point type size stating "NOTICE OF PROPOSED CONSTRUCTION OF A HIGH VOLTAGE ELECTRIC TRANSMISSION LINE".

(c) An application for a certificate shall contain information on the extent to which the proposed facility has been identified in, and is consistent with, the annual forecast reports and life-cycle cost analysis required by section 16-50r and other advance planning that has been carried out, and shall include an explanation for any failure of the facility to conform with such information.

(d) An amendment proceeding may be initiated by an application for amendment of a certificate filed with the council by the holder of the certificate or by a resolution of the council. An amendment application by a certificate holder shall be in such form and contain such information as the council shall prescribe. A resolution for amendment by the council shall identify the design, location or route of the portion of a certificated facility described in subdivisions (1) or (2) of subsection (a) of section 16-50i which is subject to modification on the basis of stated conditions or events which could not reasonably have been known or foreseen prior to the issuance of the certificate. No such resolution for amendment of a certificate shall be adopted after the commencement of site preparation or construction of the certificated facility or, in the case of a facility for which approval by the council of a right-of-way development and management plan or other detailed construction plan is a condition of the certificate, after approval of that part of the plan which includes the portion of the facility proposed for modification. A copy and notice of each amendment application shall be given by the holder of the certificate in the manner set forth in subsection (b) of this section. A copy and notice of each resolution for amendment shall be given by the council in the manner set forth in subsection (b) of this section. The council shall also provide the certificate holder with a copy of such resolution. The certificate holder and the council shall not be required to give such copy and notice to municipalities and the commissions and agencies of such municipalities other than those in which the modified portion of the facility would be located.

...der subdivision (1) of this subsection, by ... and the date on or about which it will be ...lations to be promulgated by the council. ... substantially to inform the public of such ...ient time to prepare for and to be heard at ... notice shall be published in not less than ... for a certificate for a facility described in ...f section 16-50i shall also be sent, by certi... of record as an owner of property which ... which the facility would be located. Such ... of such application is given to the general ...for a facility described in subdivision (1) of ...vided to each electric company customer in ... to be placed. Such notice shall (A) be ...er's monthly bill for one or more months, ...r than sixty days prior to filing the applica... the application is filed with the council, ...ject, including its location relative to the ... technical description of the project includ...e of heights of support structures or under... address and a toll-free telephone number ...n about the project can be obtained; and a ...point type size stating "NOTICE OF PRO... VOLTAGE ELECTRIC TRANSMISSION

...ain information on the extent to which the ... consistent with, the annual forecast reports ... 16-50r and other advance planning that has ...on for any failure of the facility to conform

...ated by an application for amendment of a ... of the certificate or by a resolution of the ...ate holder shall be in such form and contain ... A resolution for amendment by the council ... portion of a certificated facility described in ...n 16-50i which is subject to modification on ... could not reasonably have been known or ... No such resolution for amendment of a cer...nt of site preparation or construction of the ...r which approval by the council of a right-of... detailed construction plan is a condition of ... plan which includes the portion of the facility ... each amendment application shall be given ...forth in subsection (b) of this section. A copy ...shall be given by the council in the manner set ...uncil shall also provide the certificate holder ...holder and the council shall not be required to ... and the commissions and agencies of such ...odified portion of the facility would be locat-

(e) At least sixty days prior to the filing of any application with the council, the applicant shall consult with the municipality in which the facility may be located concerning the proposed and alternative sites of the facility. Such consultation with the municipality shall include, but not be limited to good faith efforts to meet with the chief elected official of the municipality. At the time of the consultation, the applicant shall provide the chief elected official with any technical reports concerning the public need, the site selection process and the environmental effects of the proposed facility. The municipality may conduct public hearings and meetings as it deems necessary for it to advise the applicant of its recommendations concerning the proposed facility. Within sixty days of the initial consultation, the municipality shall issue its recommendations to the applicant. No later than fifteen days after submitting the application to the council, the applicant shall provide to the council all materials provided to the municipality and a summary of the consultations with the municipality including all recommendations issued by the municipality.

(1971, P.A. 575, S. 6; P.A. 73-458, S. 5; P.A. 75-375, S. 3, 12; 75-509, S. 1, 4; P.A. 76-359, S. 2, 7; P.A. 79-537, S. 1; P.A. 83-569, S. 4, 17; P.A. 86-187, S. 2, 10; P.A. 89-45, S. 2, 4; 89-104; P.A. 94-176, S. 1.)

History: P.A. 73-458 amended Subsec. (a) to require statement of how facility conforms to long-range plan for expansion of power grid in (1)(B), to delete statement of methods of eliminating overhead portions in (1)(F), to delete reference to statement of applicants understanding of agency's position in (1)(H), to delete requirement that statement of loads and resources be by area in (2)(C) and to delete requirement for setting out plants costs by accounts and expenses by categories and amended Subsec. (b) to require that application copies be sent to zoning, planning, zoning and planning and conservation commissions, to inland wetland and regional planning agencies, to state departments, agencies and commissions named in Sec. 16-50j(f) and to others designated by council; P.A. 75-375 added references to environmentally, technically and economically practical routes in Subsec. (a)(1)(D); P.A. 75-509 required that notice in Subsec. (b) "be published in not less than ten-point, boldface type"; P.A. 76-359 added Subsec. (d); P.A. 79-537 clarified language with minor changes to Subsecs. (a) and (b), deleted Subsec. (c) summarizing section provisions, relettered Subsec. (d) as (c) and added new Subsec. (d) re amendments; P.A. 83-569 amended Subsec. (a) to include references to substations and switchyards; P.A. 86-187 amended Subsec. (b) to require council to send notice of certain applications to abutting property owners; P.A. 89-45 deleted requirement re notices published in boldface type; P.A. 89-104 added new Subsec. (e) re consultation with and input of municipality concerning proposed or alternative sites of a facility; P.A. 94-176 amended Subsec. (a) by adding "life-cycle" and "comparing overhead alternatives with underground alternatives" in Subpara. (F), amended Subsec. (b) by changing Subpara. designations to Subdiv. designations and adding provisions re notice of an application for a certificate, and amended Subsec. (c) by changing "identified in the annual forecast reports" to "identified in, and is consistent with, the annual forecast reports and life-cycle cost analysis" and replacing "failure to so identify the facility" with "failure of the facility to conform with such information".

See chapter 54 re uniform administrative procedure.

Cited. 177 C. 623, 625. Cited. 215 C. 474, 477, 479, 482, 483. Notice requirements and jurisdictional effect discussed. 216 C. 1, 5, 7, 9, 10. Cited. 217 C. 143, 144.

Cited. 20 CA 474, 476, 479.

Subsec. (a):

Cited. 177 C. 623, 630.

Subsec. (b):

Cited. 215 C. 474, 477, 482, 483. Cited. 216 C. 1, 3, 8, 9.

Cited. 20 CA 474, 478–480.

Subsec. (c):

Cited. 177 C. 623, 630.

Sec. 16-50m. Public hearing. Notice. (a) Upon the receipt of an application for a certificate complying with section 16-50l, the council shall promptly fix a commencement date and location for a public hearing thereon not less than thirty days nor more than one hundred fifty days after such receipt. At least one session of such hearing shall be held at a location selected by the council in the county in which the facility or any part thereof is to be located after six-thirty p.m. for the convenience of the general public. After holding at least one hearing session in the county in which the facility or any part thereof is to be located, the council may, in its discretion, hold additional hearing sessions at other locations. If the proposed facility is to be located in more than one county, the council shall fix the location for at least one public hearing session in whichever county it determines is most appropriate, provided the council may hold hearing sessions in more than one county.

(b) (1) The council shall hold a hearing on an application for an amendment of a certificate not less than thirty days nor more than sixty days after receipt of the application in the

same manner as a hearing is held on an application for a certificate if, in the opinion of the council, the change to be authorized in the facility would result in any material increase in any environmental impact of such facility or would result in a substantial change in the location of all or a portion of the facility, other than as provided in the alternatives set forth in the original application for the certificate, provided the council may, in its discretion, return without prejudice an application for an amendment of a certificate to the applicant with a statement of the reasons for such return. (2) The council may hold a hearing on a resolution for amendment of a certificate not less than thirty days nor more than sixty days after adoption of the resolution in the same manner as provided in subsection (a) of this section. The council shall hold a hearing if a request for a hearing is received from the certificate holder or from a person entitled to be a party to the proceedings within twenty days after publication of notice of the resolution. Such hearing shall be held not less than thirty days nor more than sixty days after the receipt of such request in the same manner as provided in subsection (a) of this section. (3) The county in which the facility is deemed to be located for purposes of a hearing under this subsection shall be the county in which the portion of the facility proposed for modification is located.

(c) The council shall cause notices of the date and location of each hearing to be mailed, within one week of the fixing of the date and location, to the applicant and each person entitled under section 16-50l to receive a copy of the application or resolution. The general notice to the public shall be published in not less than ten point, boldface type.

(d) Hearings, including general hearings on issues which may be common to more than one application, may be held before a majority of the members of the council.

(e) During any hearing on an application or resolution held pursuant to this section, the council may take notice of any facts found at a general hearing.

(1971, P.A. 575, S. 7; P.A. 73-339, S. 1, 2; 73-458, S. 6; P.A. 75-375, S. 4, 12; 75-509, S. 2–4; P.A. 76-282, S. 2, 3; P.A. 79-537, S. 2; P.A. 90-254, S. 1.)

History: P.A. 73-339 added provision re hearing-location when facility to be in more than one county in Subsec. (a); P.A. 73-458 added Subsec. (d) requiring majority of members for hearings and proceedings; P.A. 75-375 required that hearing commence not more than one hundred fifty rather than one hundred eighty days after receipt of application, clarified applicable hearings under Subsec. (d) and added Subsec. (e) re facts found at general hearing; P.A. 75-509 required one evening session of hearing in Subsec. (a) and required that published notice be in "not less than ten-point, boldface type"; P.A. 76-282 added proviso in Subsec. (b) re return of application for amendment; P.A. 79-537 clarified language by making minor changes and amended Subsec. (b) to require hearing on amendment application between thirty and sixty days after its receipt and to add provisions re hearings on resolutions; P.A. 90-254 made change to specify that the first hearing session be held in the county in which the facility is located.

Cited. 177 C. 623, 625. Cited. 215 C. 474, 479, 480, 483. Cited. 216 C. 1, 4.
Subsec. (b):
Cited. 177 C. 623, 626, 627, 630.
Subsec. (c):
Cited. 212 C. 157, 159. Cited. 215 C. 474, 482, 483. Cited. 216 C. 1, 5.

Sec. 16-50n. Parties to a certification or amendment proceeding or a declaratory ruling. Grouping of parties. Intervenors. Counsel and consultant to council. Limited appearances. (a) The parties to a certification or amendment proceeding or to a declaratory ruling proceeding shall include: (1) The applicant, certificate holder, or petitioner; (2) each person entitled to receive a copy of the application or resolution under section 16-50l, if such person has filed with the council a notice of intent to be a party; (3) any domestic or qualified nonprofit corporation or association formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups or to promote the orderly development of the areas in which the facility is to be